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Message Text

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ACTION IO-13

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FOR SCHWEBEL AND NORRIS

EO 11652: N/A
TAGS: UNIDO, EIND, OCON, ORG
SUBJ: IGC-V: ARTICLES 20 (AMENDMENTS) AND 24 (RESERVATIONS); OUTSTANDING ISSUES

REF: VIENNA 2362

1. DURING THE FIFTH SESSION OF THE INTER-GOVERNMENTAL COMMITTEE OF THE WHOLE TO DRAW UP A CONSTITUTION FOR UNIDO AS A SPECIALIZED AGENCY (IGC-V), THE LEGAL DRAFTING GROUP WAS CALLED UPON TO CONSIDER PROVISIONS PREVIOUSLY ASSIGNED TO IT ON WHICH AGREEMENT HAD NOT BEEN REACHED: ARTICLE 3 (BOS) (OBSERVERS); 5 (WITHDRAWAL); 19 (SETTLEMENT OF DISPUTES) 20 (AMENDMENTS); 22(ENTRY INTO FORCE); 23(TRANS-ITIONAL ARRANGEMENTS;) AND 24(RESERVATIOLS. IT ALSO DEALT WITH ANNEX I (TRANSITIONAL ARRANGEMENTS) AND ANNEX IV (RULES CONCERNING ARBITRAL TRIBUNALS AND CONCILIATION COMMISSIONS);. AGREEMENT WAS REACHED EXCEPT WITH RESPECT TO ANNEX I, WHICH WAS DELETED, AND ARTICLES 20 AND 24.

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2. LOOKING TOWARD FORMULATION OF U.S. POSITIONS AT ANY FUTURE NEGOTIATIONS ON THE UNIDO CONSTITUTION, THE PROBLEMS WITH RESPECT TO ARTICLE 20 (AMENDMENTS) ARE AS FOLLOWS:

(A) SHOULD THERE BE A MORATORIUM ON THE SUBMISSION OF AMENDMENTS FOR A SPECIFIED PERIOD AFTER THE CONSTITUTION ENTERS INTO FORCE? THE CONSIDERATION IN FAVOR OF A MORATOR-

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IUM IS OBVIOUS: WE SHOULD HAVE A GOOD LOOK AT THE OPERATION OF THE EXISTING CONSTITUTION BEFORE WE START CHANGING IT. GROUP B INITIALLY PROPOSED A FIVE YEAR MORATORIUM, AND LATER CHANGED TO A SLIGHTLY DIFFERENT FORMULATION: TWO FISCAL PERIODS (FOUR YEARS). OUR SOUNDINGS INDICATE THAT GRP D SUPPORTS A SUBSTANTIAL MORATORIUM AND THAT GROUP 77 AGREES THAT THERE SHOULD BE A MORATORIUM, BUT NOT AS LONG AS GROUP B SUGGESTS., E.G., ONE FINANCIAL PERIOD.

(B) SHOULD ALL PROPOSED AMENDMENTS BE CONSIDERED IN SOME FASHION BY THE BOARD? GROUP B URGED THAT PROPOSAL AMENDMENTS TO ARTICLES ON THE "SHOPPING LIST" (SEE (D) BELOW) RECEIVE A FOUR FIFTHS (LATTER GROUP B CONSIDERED THREE-QUARTERS IN THE LEGAL DRAFTING GROUP AND EVEN TWO-THIRDS IN THE CORRIDORS) MAJORITY IN THE BOARD BEFORE BEING RECOMMENDED TO THE CONFERENCE. GROUP B ALSO URGED THAT NON"SHOPPING LIST" ARTICLES BE SENT TO THE BOARD FOR COMMENT, THOUGH NOT NECESSARILY APPROVAL, BEFORE BEING SENT TO THE CONFERENCE. GROUP D WAS SUPPORTIVE, THOUGH QUET, ON THE GROUP B PROPOSALS. GROUP 77 WAS PREPARED TO CONCEDE A SPECIAL STATUS FOR "SHOPPING LIST" ARTICLES, BUT WOULD NOT AGREE TO BOARD CONSIDERATION OF THE "NON-SHOPPING LIST" ARTICLES, (AS REPORTED IN SEPTEL, GROUP B IN PRESI-DENT'S NEGOTIATING GROUP INDICATED THAT IT WOULD ACCEPT G-77 POSITION ON THIS POINT IN ENDEAVOR TO REACH COMPROMISE TEXT OF ENTIRE ARTICLE, INCLUDING SHOPPING LIST.)
COMMENT: GIVEN THE IMPORTANCE OF ARTICLE 20, GROUP B COUNTRIES HAVE NOT BEEN AS TOUGH AS WE WOUOD HAVE HOPED, FOR EXAMPLE, THEIR WILLINGNESS TO DISCUSS RATIFICATION OF LIMITED OFFICIAL USE

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SHOPPING LIST ARTICLES BY ONLY TWO-THIRDS.

(C) HOW MUCH PROTECTION DOES THE REQUIREMENT OF A TWO-THIRDS OF THE MEMBERS RPT MEMBERS OF THE CONFERENCE FOR THE ADOPTION OF AMENDMENTS GIVE THE DEVELOPED COUNTRIES? GROUP 77 ARGUES THAT THIS REQUIREMENT IS A SUBSTANTIAL PRO-TECTION FOR US. US DEL IS
SCEPTICAL; WE ASSUME THAT IF AN IMPORTANT AMENDMENT WERE ON THE AGENDA, GROUP 77 WOULD BE ABLE TO MOBILIZE ITS TROOPS. WE CONCLUDE THAT AT FUTURE MEETINGS THERE SHOULD BE LITTLE CONFIDENCE ON THE PART OF THE DEVELOPED COUNTRIES THAT THEY COULD HOLD OFF AN UNDESIRABLE AMENDMENT AT THE CONFERENCE.

(D) WHAT ARTICLES SHOULD COMPRISE THE "SHOPPING LIST"? GROUP B HAS PROPOSED THE FOLLOWING "SHOPPING LIST": ARTICLES 5(WITHDRAWAL; 8(INDUSTRIAL DEVELOPMENT BOARD); 8(BIS) (PROGRAM AND BUDGET COMMITTEE); 10 (BIS) (COMPOSITION OF BUDGETS); 11(PROGRAMME AND BUDGET); 12

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(ASSESSED CONTRIBUTIONS;) 20(AMENDMENTS) AND ANNEX III
(THE REGULAR BUDGET). GROUP B WAS PREPARED TO REGARD
ARTICLE 5 AS EXPENDABLE UNTIL US DEL INDICATED IT WAS
ESSENTIAL. GROUP B STILL REGARDS ARTICL 5 AS BENEFICIAL
ONLY TO THE U.S. (DISCUSSION REFTEL) SINCE THE BASIC
POLITICAL EFFECT OF THIS ARTICLE RELATES ONLY TO THE MAJOR
CONTRIBUTO. GROUP 77 IS AGREEABLE TO A "SHOPPING LIST"
OF ARTICLES 10 BIS, ANNEX III, 11 AND 20. GROUP D HAS
NO INTEREST IN ARTICLE 5 AND HAS NOT AGREED TO ANNEX III
OF 10 BIS, BUT INSISTS ON ARTICLES 8 AND 8(BIS). WE CON-
TINUE TO BELIEVE THAT THE PROTECTION OF ARTICLE 5 IS
ESSENTIAL TO US PARTICIPATION IN THE ORGANIZATION.
(E) WHAT PROTECTION DOES A HIGH RATIFICATION REQUIREMENT
FOR "SHOPPING LIST" ARTICLES GIVE US? IT IS NOW PROPOSED
BY GROUP B THAT AMENDMENTS TO THE "SHOPPING LIST" ARTICLES
REQUIRE RATIFICATION BY THREE-QUARTERS OF THE MEMBERS.
US DEL ESTIMATES THAT GROUP 77 COULD GET THREE-QUARTERS
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OF THE MEMBERSHIP TO RATIFY AN AMENDMENT IS CONSIDERED
IMPORTANT. HOWEVER, U.S. DEL THINKS THIS PROVISION IS
OF SOME BENEFIT, SINCE IT WOULD GIVE THE US MORE TIME TO
HAVE RECOURSE TO ARTICLE 5.

3. WITH RESPECT TO ARTICLE 24 (RESERVATIONS), GROUP B
HAD ASSUMED THAT, IN THE USUAL MANNERN GROUP D WAS CONCERNED
WITH ITS ABILITY TO RESERVE ON THE SETTLEMENT OF DISPUTES
ARTICLE (ARTICLE 19). GROUP B ACCORDINGLY MADE SPECIAL
EFFORTS TO WORK OUT A FORMULATION OF ARTICLE 19 WHICH WAS
NOT OBJECTIONABLE TO GROUP D. IN EXTENSIVE CONVERSATIONS,
GROUP D (GDR REPRESENTATIVE IS GROUP D SPOKESMAN) HAS IN-
DICATED THAT IT INSISTES ON KEEPING ITS OPTIONS OPEN ON
ARTICLE 24 BECAUSE OF ITS GENERAL CONCERN ABOUT THE BUDGETARY
PROVISIONS EVOLVING IN THE CONFERENCE (PURSUANT TO EVENTUAL
ARTICLE 11, PARA 4). US DEL DOES NOT KNOW HOW A RESER-
VATION COULD PROVIDE PROTECTION TO GROUP D FROM AN UNDE-
SIRABLE BUDGETARY PROVISION, E.G., BUDGETARY POWERS OF THE
CONFERENCE AND WE DO NOT THINK THEY KNOW EITHER. NEVERTHELESS, US DEL
THINKS THAT ANY MOVEMENT BY GROUP D WITH RESPECT TO ARTICLE
24 IS UNLIKELY UNTIL THE MAJOR BUDGETARY PROBLEMS HAVE
BEEN RESOLVED.STIBRAVY

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